

Appl. No. 09/446,202
Amended by Docket No. 6741
Amended dated 06/12/2003
Reply to Office Action of 03/18/03

REMARKS/ARGUMENTS

Claims 14, 22 and 23 are now in the case. Claims 1-13 were previously cancelled. Claims 15-21 have been cancelled herewith. Claim 14 has been amended to recite 50% as the upper range of the surfactant concentration. Basis is at page 3, line 28. Claim 14 has been further amended to recite the 10.5 to 13 pH range. Basis is at page 4, penultimate paragraph. Claims 22 and 23 are newly presented. Basis for the "usage instruction" language in Claim 22 appears at page 4, last full paragraph, to page 5, lines 1-4, of the specification. Basis for Claim 23 appears at page 3, line 25-26 (0.1% to 5% of the composition of Claim 14) and original Claim 1 (treatment time/without rinsing). It is submitted that all claims are fully supported and entry is requested.

Rejections Under 35 USC 112

There are no §112 rejections outstanding.

Rejections Under 35 USC 103

Claims 14, 15 and 17 stand rejected over U.S. 5,498,295 in view of U.S. 4,140,649, for reasons of record at page 2 of the Office Action.

Applicants respectfully traverse all §103 rejections, to the extent they may apply to Claim 14 (amended) and new Claims 22 and 23, now in the case.

With regard to the '295 patent, the Examiner's attention is directed to the passage at Column 8, beginning line 57, relating to "Sequestrant/builder". There, a variety of carboxylic acid sequestrants are disclosed, but ethylenediaminetetraacetate (EDTA; per component (c) of Claim 14, herein) is not taught or suggested.

Moreover, at Column 8, lines 65-67, the patentees teach, "Complex phosphates can also be used, but are generally avoided due to regulatory considerations." Accordingly, it is submitted that this can be fairly said to teach away from the use of phosphates, and is certainly not suggestive of the sodium tripolyphosphate which can comprise component (c) of Claim 14.

With regard to the '649 patent, its disclosure of the use of EDTA is in regard to wash water having, "...a pH value between 5 and 8, especially about 6." See Column 3, l. 8-9. Nothing therein suggests the "pH about 10.5 to about 13" specified in (b) of amended Claim 14.

In summary, the combination of references would require the use of EDTA at a pH range that is well outside that taught by Applicants herein to reduce the level of microorganisms on food. See Specification at page 4, penultimate paragraph. It is respectfully submitted that the cited patents provide no suggestion that such a modification of the pH parameter could, or should, be made.

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Amdt. dated 06/12/2003
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In light of the foregoing, reconsideration and withdrawal of the rejections over this combination of references are requested.

Case Law In Support Of Claim 22

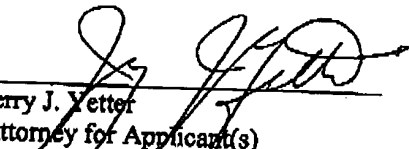
The Examiner is aware that, "...printed matter, in an article of manufacture claim, can be given 'patentable weight.'" *In re Miller*, 164 U.S.P.Q. 46, 49 (C.C.P.A. 1969; emphasis in the original). Moreover, "Differences between an invention and the prior art cited against it cannot be ignored merely because those differences reside in the content of the printed matter.... The claim must be read as a whole." *In re Gulack*, 217 U.S.P.Q. 401, 403 (Fed. Cir. 1983).

In short, it is submitted that the Claim 22, as presented herewith, is not taught or suggested by the cited art, and that the instructions associated therewith further distinguish it over the cited art in the sense of 35 US §§ 102 and 103.

Early and favorable action on Claims 14, 22 and 23 is requested.

Respectfully submitted,
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